

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Amendment of Section 73.202(b))

Table of Allotments,)

FM Broadcast Stations.)

(Eugene, Oregon))

RM-8613

MM Docket No. 95-53

TO: Chief, Allocations Branch

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REPLY COMMENTS

On behalf of Conway Broadcasting ("Petitioner"), we hereby reply to the Comments filed by Combined Communications, Inc. and McKenzie River Broadcasting Co. (collectively, "Commenters") in the captioned proceeding. Commenters (both of whom, not coincidentally, are licensees of existing stations in Eugene, Oregon) argue that Petitioner's proposed allotment should not be made because the site proposed by Petitioner would not provide line-of-site coverage to Eugene. Both Commenters cite *Creswell, Oregon*, 3 F.C.C. Rcd. 4608 (1988), *recon. denied*, 4 F.C.C. Rcd. 7040 (1989), in support of their arguments against this proposal. In *Creswell, Oregon*, however, the Commission found that, "[n]o site is available that would permit the operation of a station in compliance with our rules." *Id.*, 4 F.C.C. Rcd. at 7041.

In allotment proceedings, it is well settled that the Commission requires only "reasonable assurance that a site meeting the applicable Commission requirements would be available." *Pinckneyville, Illinois*, 41 R.R. 2d 69, 71 (1977). Furthermore, "there is no need to specify a particular site, it is only necessary to show that a suitable site area exists." *Id.* City coverage is determined by reference to FCC Rule § 73.313, without reference to possible

obstructions. As shown in the map attached as Figure 1 to the enclosed Engineering Exhibit prepared by Mark A. Mueller of Mueller Broadcast Design, a station located at the proposed allotment reference point would provide city-grade coverage to Eugene, Oregon utilizing the calculation method set forth in FCC Rule § 73.313. Additionally, the Commission has stated that proof of city coverage is required "only in cases involving site restrictions of approximately 6.5 to 8 miles measured from the city's center." *Natchitoches, Louisiana*, 52 R.R. 2d 1558, 1561 (1983). In this case, the proposed site restriction is only 4.4 miles Southeast of Eugene (or 4.7 miles using Petitioner's proposed site). Neither of the Commenters has supplied any methodology or calculations to show that city coverage would not be provided from Petitioner's site. Such lack of specifics was fatal to the petitioner in *Creswell, Oregon*.

In any event, and as set forth in the attached Engineering Exhibit, there is a short-spaced site available less than 1 km from the fully spaced boundary that would provide a high antenna elevation without necessitating construction of a tall tower. Such a site could be utilized by providing contour protection under FCC Rule § 73.215.


In summary, for allotment purposes, the Commission may not consider possible terrain obstructions in determining whether city-grade coverage can be provided from Petitioner's proposed site, particularly when that site is less than 6.5 miles from the center of Eugene. In any event, Petitioner can provide line-of-site coverage to Eugene from a short-spaced site which may be utilized under the contour protection provisions of FCC Rule § 73.215.

Accordingly, the Commission should amend the FM Table of Allotments as proposed and thereby serve the public interest by providing the community of Eugene, Oregon with an additional local FM service. Petitioner hereby restates its present intention to apply for the channel if it is allotted and, if authorized, to build the station promptly.¹

Respectfully submitted,

CONWAY BROADCASTING, INC.

By:



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Its Attorneys

July 7, 1995

¹The slanderous intimations of McKenzie regarding Petitioner's intentions to apply for and construct the facilities for which it has proposed allotments are baseless and should be disregarded.

ORIGINAL

Mueller Broadcast Design

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**ENGINEERING EXHIBIT FOR
CONWAY BROADCASTING
FM CHANNEL 265A
EUGENE, OREGON**

This engineering exhibit was prepared in support of a Petition for Rulemaking to amend the FCC rules at 47 CFR 73.202 to add FM channel 265A at Eugene, Oregon (MM Docket 95-53, RM-8613).

Two comments in this proceeding oppose the proposed allotment based on lack of line of sight coverage to the community of license. While it is true that there is a very limited fully spaced transmitter site area for this channel, it is also true that there is no absolute requirement that the actual licensed site be located in this area. Under 47 CFR 73.215, an applicant can propose a short-spaced site which provides full protection to the service contours of the short-spaced station (and vice versa). Such a site is available less than 1 kilometer from the full-spaced boundary and would provide a high antenna elevation without construction of a tall tower.

The two objections are based on potential terrain blockage. While it is true that 47 CFR 73.315 refers to unobstructed line of sight coverage, nowhere else do the FCC rules define how to calculate the effect an obstruction would have on the calculated service contours of a station. In fact, the Commission has specifically declined to allow such calculations be used to define contours. The methods outlined in 47 CFR 73.313 must be used to determine compliance with the city coverage requirements. The attached figure 1 is a map illustrating the 70 dBu and 60 dBu calculated service contours of a station located at the allocation reference point with an omnidirectional antenna 100 meters above average terrain at 6 KW ERP. The contour locations are calculated at one degree intervals using the NGDC 30 second terrain database. It is clear that the FCC definition of city-grade service will be delivered to Eugene, Oregon.

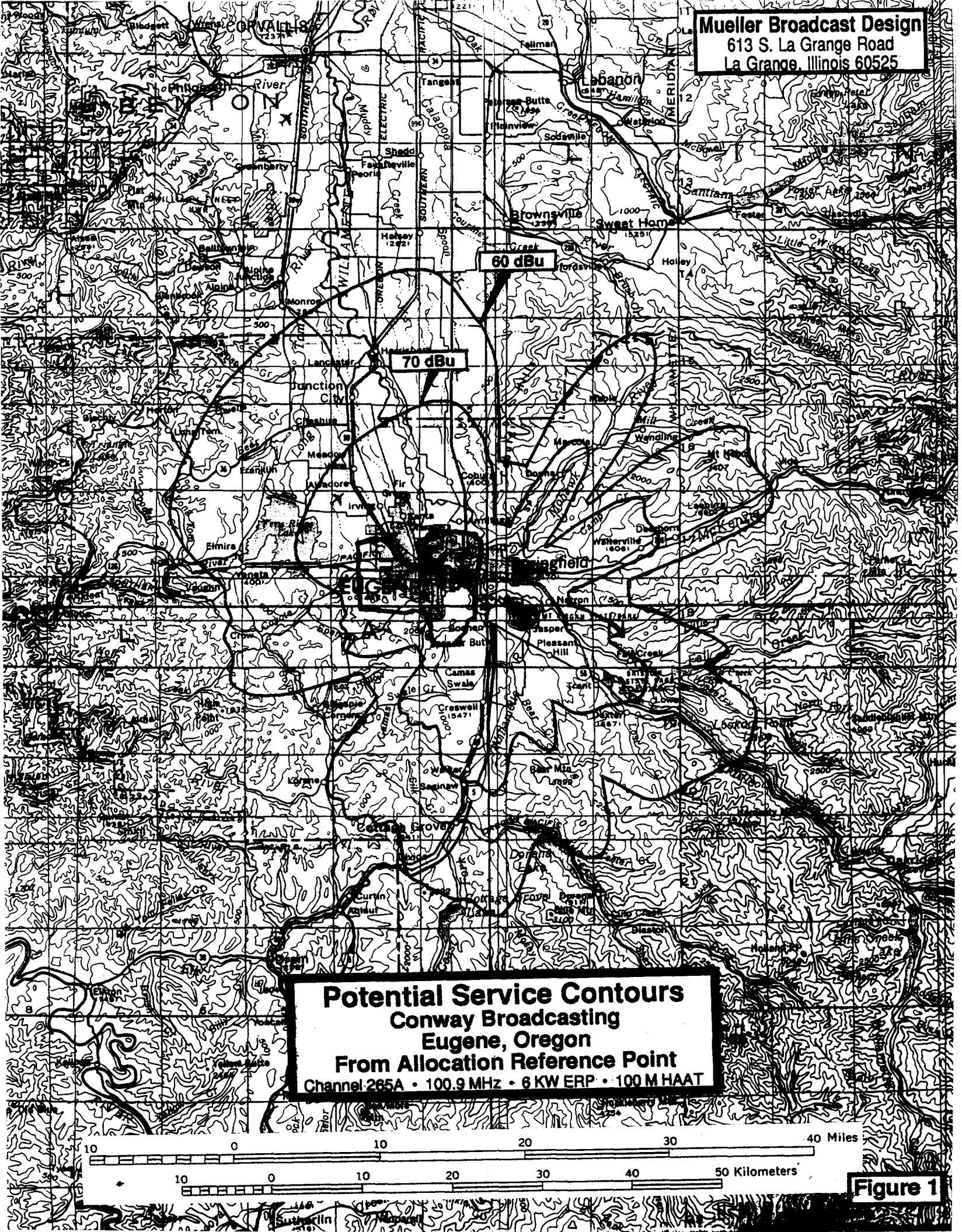
No methodology or sample calculations are submitted with either opposition to support the contention that 70 dBu or better service would not be provided to the proposed community of license.

This engineering exhibit was prepared by me and is true and correct to the best of my knowledge and belief.

July 5, 1995


Mark A. Mueller

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Potential Service Contours
Conway Broadcasting
Eugene, Oregon
From Allocation Reference Point
Channel 265A • 100.9 MHz • 6 KW ERP • 100 M HAAT

Figure 1

CERTIFICATE OF SERVICE

I, Sharon K. Mathis, a secretary with the law firm of Cole, Raywid & Braverman, L.L.P., do hereby certify that copies of the foregoing "Reply Comments" have been sent via first-class, postage prepaid, United States mail, this 7th day of July, 1995, to the following:

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